

Office of the Secretary
1020 S Kansas Ave., Suite 200
Topeka, KS 66612-1327



Phone: (785) 296-2281
Fax: 785-296-6953
www.kdwp.state.ks.us

Robin Jennison, Secretary

Sam Brownback, Governor

31 May 2011

Representative Carl Holmes, Chair
P.O. Box 2288
Liberal, KS 67905

Re: August 2011 Commission Meeting

Dear Representative Holmes:

The Wildlife and Parks Commission will be addressing 3 permanent regulations at its August 11, 2011 meeting in Great Bend, Kansas. I have enclosed the public notice expected to be published in the June 9, 2011 issue of the Kansas Register.

The Secretary of State's Office should send you copies of the proposed regulations and the economic impact statements shortly. If you do not receive any of these documents, please contact me and I will provide you with copies.

If you have any questions about these regulations, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "C. J. Tymeson".

Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks

enclosure

cc: Sen. Vicki Schmidt, Vice-Chair, Joint Committee
Rep. Janice Pauls, Ranking Minority Member, Joint Committee
Raney Gilliland, Legislative Research
David Springe, Citizens Regulatory Review Board

Wildlife and Parks Commission

Notice of Public Hearing

A public hearing will be conducted by the Wildlife and Parks Commission at 7:00 p.m., Thursday, August 11, 2011 at the Wetlands Education Center, 592 NE K-156 Highway, Great Bend, Kansas, to consider the approval and adoption of proposed regulations of the Kansas Department of Wildlife and Parks.

A general discussion and workshop meeting on business of the Wildlife and Parks Commission will begin at 1:30 p.m., August 11 at the location listed above. The meeting will recess at 5:30 p.m. then resume at 7:00 p.m. at the same location for more business and the regulatory hearing. There will be public comment periods at the beginning of the afternoon and evening meetings for any issues not on the agenda and additional comment periods will be available during the meeting on agenda items. Old and new business may also be discussed at this time. If necessary to complete business matters, the Commission will reconvene at 9:00 a.m. August 12 at the location listed above.

Any individual with a disability may request accommodation in order to participate in the public meeting and may request the meeting materials in an accessible format. Requests for accommodation to participate in the meeting should be made at least five working days in advance of the meeting by contacting Sheila Kemmis, Commission Secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission for the Deaf and Hard of Hearing at 1-800-432-0698 to request special accommodations.

This 60-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheila.kemmis@ksoutdoors.com if electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations that will be heard during the regulatory hearing portion of the meeting are as follows:

K.A.R. 115-16-3. This permanent regulation establishes the application, provisions and requirements for nuisance bird control permits. The proposed amendments would add and remove birds from the nuisance list and require the use of nontoxic shot and bullets.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-2-3a. This permanent regulation establishes fees for department cabins. The regulation is proposed for revocation.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-8-13. This permanent regulation establishes authorized operation for motor vehicles on department lands and waters. The proposed amendments would allow certain motor vehicles onto ice covered department waters for the purpose of ice fishing.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the Commission at the address above, electronically on the department's website at www.kdwp.state.ks.us, or by calling (785) 296-2281.

Kelly Johnston, Chairman

Document No. _____

KANSAS REGISTER
SUBMISSION FORM

Agency Number -- 710-01

Agency Name -- Kansas Department of Wildlife and Parks

Agency Address - 1020 S. Kansas Ave., Suite 200

Topeka, Kansas 66612-1233

Title of Document -- Public Meeting

Desired Date of Publication - June 9, 2011

ITEMS SUBMITTED IN DUPLICATE

CERTIFICATION

I hereby certify that I have reviewed the attached documents, and that they conform to all applicable Kansas Register publication guidelines and to the requirements of K.S.A. 75-431, as amended. I further certify that submission of these items for publication is a proper and lawful action of this agency, that funds are available to pay the publication fees and that such fees will be paid by this agency on receipt of billing.

Christopher J. Tymeson
Liaison officer's typed name


Liaison officer's signature

Department Attorney
Title

(785) 296-2281
Phone

This space for Register office use only

Wildlife and Parks Commission

Notice of Public Hearing

A public hearing will be conducted by the Wildlife and Parks Commission at 7:00 p.m., Thursday, August 11, 2011 at the Wetlands Education Center, 592 NE K-156 Highway, Great Bend, Kansas, to consider the approval and adoption of proposed regulations of the Kansas Department of Wildlife and Parks.

A general discussion and workshop meeting on business of the Wildlife and Parks Commission will begin at 1:30 p.m., August 11 at the location listed above. The meeting will recess at 5:30 p.m. then resume at 7:00 p.m. at the same location for more business and the regulatory hearing. There will be public comment periods at the beginning of the afternoon and evening meetings for any issues not on the agenda and additional comment periods will be available during the meeting on agenda items. Old and new business may also be discussed at this time. If necessary to complete business matters, the Commission will reconvene at 9:00 a.m. August 12 at the location listed above.

Any individual with a disability may request accommodation in order to participate in the public meeting and may request the meeting materials in an accessible format. Requests for accommodation to participate in the meeting should be made at least five working days in advance of the meeting by contacting Sheila Kemmis, Commission Secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission for the Deaf and Hard of Hearing at 1-800-432-0698 to request special accommodations.

This 60-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the Chairman of the Commission, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612 or to sheila.kemmis@ksoutdoors.com if electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations that will be heard during the regulatory hearing portion of the meeting are as follows:

K.A.R. 115-16-3. This permanent regulation establishes the application, provisions and requirements for nuisance bird control permits. The proposed amendments would add and remove birds from the nuisance list and require the use of nontoxic shot and bullets.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-2-3a. This permanent regulation establishes fees for department cabins. The regulation is proposed for revocation.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

K.A.R. 115-8-13. This permanent regulation establishes authorized operation for motor vehicles on department lands and waters. The proposed amendments would allow certain motor vehicles onto ice covered department waters for the purpose of ice fishing.

Economic Impact Summary: The proposed amendments are not anticipated to have any appreciable negative economic impact on the department, other agencies, small businesses or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the Commission at the address above, electronically on the department's website at www.kdwp.state.ks.us, or by calling (785) 296-2281.

Kelly Johnston, Chairman

115-16-3. Nuisance bird control permit; application, provisions, and requirements. (a) The term

“nuisance birds” shall include ~~the following species:~~

- (1) ~~yellow-headed blackbird;~~
- (2) ~~red-winged blackbird;~~
- (3) ~~bi-colored red-winged blackbird;~~
- (4) ~~rusty blackbird;~~
- (5) ~~brewer's blackbird;~~
- (6) ~~cowbird;~~
- (7) ~~grackle;~~
- (8) ~~crow;~~
- (9) ~~magpie;~~
- (10) ~~feral pigeon;~~
- (11) ~~english sparrow; and~~

(12) starling those species specified in the department's “Kansas nuisance bird species table,”

dated May 9, 2011, which is hereby adopted by reference.

(b) Nuisance birds may be controlled when found depredating or about to depredate upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

(c) A nuisance bird control permit shall be required to use any lethal method of control ~~which~~ that involves poisons or chemicals for controlling nuisance birds other than the feral pigeon, English

ATTORNEY GENERAL DEPT. OF ADMINISTRATION

MAY 19 2011

MAY 18 2011

APPROVED BY



APPROVED

sparrow, or European starling.

(d) Any person may apply to the secretary for a nuisance bird control permit. The application shall be submitted on forms provided by the department ~~and~~. Each applicant shall provide the following information:

- (1) The applicant's name ~~of the applicant~~;
- (2) the applicant's address ~~of the applicant~~;
- (3) the applicant's telephone number ~~of the applicant~~;
- (4) the location of the nuisance bird problem;
- (5) a description of the problem;
- (6) the species of birds involved;
- (7) the proposed method of control;
- (8) the length of time for which the permit is requested; and
- (9) any other relevant information as required by the secretary.

(e) Issuance of ~~the~~ a permit may be denied by the secretary if any of the following conditions is met:

- (1) The permit application is unclear or incomplete;
- (2) The need for nuisance bird control has not been established; ~~or~~
- (3) Use of the poison or chemical would pose inordinate risk to the public, non-target wildlife, or the environment.

(f) ~~The~~ Each permit shall be valid only for the ~~time~~ period specified on the permit, ~~but~~ which

ATTORNEY GENERAL

MAY 19 2011

APPROVED BY 

DEPT. OF ADMINISTRATION

MAY 18 2011

APPROVED

shall not exceed one year.

(g) A permit may be extended by the secretary upon request and justification by the permittee. However, the combined total of the original and the extended time ~~period~~ periods shall not exceed one year.

(h) ~~The~~ Each permit shall be valid only for the locations specified in the permit.

(i) In addition to other penalties as prescribed by law, a nuisance bird control permit may be revoked by the secretary if either of the following conditions is met:

(1) The permit was secured through false representation; ~~or~~

(2) The permittee fails to meet permit requirements or violates permit conditions.

(j) A nuisance bird control permit shall not be required to control nuisance bird problems as described in subsection (b) ~~when if~~ the control method is ~~non-lethal~~ nonlethal or ~~when if~~ the control method involves use of firearms, ~~bow and arrow~~ archery equipment, or falconry.

(k) Nuisance birds killed and the plumage of nuisance birds killed during nuisance bird control may be possessed, transported, and otherwise disposed of or utilized, except that nuisance birds killed and the plumage of nuisance birds killed during nuisance bird control shall not be sold or offered for sale.

(l) ~~All nuisance bird control activities shall be subject to all federal and state laws and rules and regulations~~ Nontoxic shot and bullets shall be required for the taking of nuisance birds pursuant to this regulation, except when using an air rifle, air pistol, or .22 caliber rimfire firearm. (Authorized by K.S.A. 1991-Supp. 32-807 and K.S.A. 1991-Supp. 32-955; implementing K.S.A. 1991-Supp. 32-955,

ATTORNEY GENERAL

MAY 19 2011

APPROVED BY



DEPT. OF ADMINISTRATION

MAY 18 2011

APPROVED

K.S.A. ~~1991~~ 2010 Supp. 32-1002, and K.S.A. ~~1991~~ 2010 Supp. 32-1003; effective Sept. 10, 1990;
amended Aug. 31, 1992; amended P-_____.)

ATTORNEY GENERAL

MAY 19 2011

APPROVED BY 

DEPT. OF ADMINISTRATION

MAY 18 2011

APPROVED

ECONOMIC IMPACT STATEMENT

K.A.R. 115-16-3. Nuisance bird control permit; application, provisions, and requirements.

DESCRIPTION: This permanent administrative regulation establishes requirements for nuisance bird control permits. These permits authorizes the take of certain species when found depredating. The proposed changes would remove two species from the listing and require the use of nontoxic shot or bullets when using a gun.

FEDERAL MANDATE: Nontoxic shot and species.

ECONOMIC IMPACT: No economic impact to the department, other agencies, small businesses, or the general public is anticipated.

ALTERNATIVES CONSIDERED: None.

Kansas Department of Wildlife and Parks
Kansas Nuisance Bird Species Table

Dated: May 9, 2011

Blackbirds:

- Brewer's blackbird (*Euphagus cyanocephalus*)
- Red-winged blackbird (*Agelaius phoeniceus*).
- Yellow-headed blackbird (*Xanthocephalus xanthocephalus*)

Cowbirds:

- Bronzed cowbird (*Molothrus aeneus*)
- Brown-headed cowbird (*Molothrus ater*)
- Shiny cowbird (*Molothrus bonariensis*).

Grackles:

- Boat-tailed grackle (*Quiscalus major*)
- Common (*Quiscalus quiscula*)
- Great-tailed (*Quiscalus mexicanus*)
- Greater Antillean (*Quiscalus niger*).

Crows:

- American crow (*Corvus brachyrhynchos*)
- Fish crow (*Corvus ossifragus*)
- Northwestern crow (*Corvus caurinus*)

Magpies:

- Black-billed magpie (*Pica hudsonia*)
- Yellow-billed magpie (*Pica nuttalli*)

Pigeons:

- Feral Pigeons (Rock Dove) (*Columba livia*)

Sparrows:

- English (House) Sparrow (*Passer domesticus*)

Starlings:

- European Starlings (*Sturnus vulgaris*)

Nonnative species:

As defined and listed in 70 FR 12710, published March 15, 2005, on the Final List beginning on Page 12714, except those birds listed that are also designated as endangered, threatened, or as a species in need of conservation under K.A.R. 115-15-1 or K.A.R. 115-15-2, or, the Eurasian Collared-Dove (*Streptopelia decaocto*) or the Ringed Turtle-Dove (*Streptopelia risoria*).

ADDRESSES: The complete file for this notice is available for inspection, by appointment (contact John L. Trapp, (703) 358-1714), during normal business hours at U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4107, Arlington, Virginia.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Notice?

Migratory Bird Treaty Reform Act of 2004 (Division E, Title I, Sec. 143 of the Consolidated Appropriations Act, 2005, Pub. L. 108-447).

What Is the Purpose of This Notice?

The purpose of this notice is to make the public aware of the final list of "all nonnative, human-introduced bird species to which the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) does not apply," as required by the MBTRA of 2004.

This notice is strictly informational. It merely lists some of the bird species to which the MBTA does not apply. The presence or absence of a species on this list has no legal effect. This list does not change the protections that any of these species might receive under such agreements as CITES—the Convention on International Trade in Endangered Species of Wild Fauna and Flora (T.I.A.S. 8249), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544, 87 Stat. 275), or the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901–4916, 106 Stat. 2224). Regulations implementing the MBTA are found in parts 10, 20, and 21 of 50 CFR. The list of migratory birds covered by the MBTA is located at 50 CFR 10.13.

What Was the Response of the Public to the Draft List?

A notice announcing a draft list of the nonnative human-introduced bird species to which the MBTA does not apply was published on January 4, 2005 (70 FR 372), with a request for public comments. The notice generated approximately 826 nonduplicated comments from the public. The draft list was supported by 21 State wildlife agencies (Arizona Game and Fish Department; Connecticut Bureau of Natural Resources; Delaware Division of Fish and Wildlife; Florida Fish and Wildlife Conservation Commission; Maryland Department of Natural Resources; Massachusetts Division of Fisheries and Wildlife; Michigan Department of Natural Resources; Montana Fish, Wildlife, and Parks; New Hampshire Fish and Game Department; New Jersey Division of Fish and Wildlife; New York State Division of Fish, Wildlife, and Marine Resources; North Carolina Wildlife Resources

Commission; North Dakota Game and Fish Department; Oklahoma Department of Wildlife Conservation; Pennsylvania Game Commission; Rhode Island Division of Fish and Wildlife; South Dakota Department of Game, Fish, and Parks; Vermont Department of Fish and Wildlife; Virginia Department of Game and Inland Fisheries; Wisconsin Department of Natural Resources; and Wyoming Game and Fish Department), 11 nonprofit organizations representing bird conservation and science interests (American Bird Conservancy—submitted on behalf of 10 constituent organizations; Atlantic Flyway Council—representing 17 States, 7 Provinces, Puerto Rico, and the U.S. Virgin Islands; California Partners in Flight; Environmental Studies at Airline-Swan Research Program; Friends of Iroquois National Wildlife Refuge; National Audubon Society; National Wildlife Federation; Ornithological Council—representing 11 scientific societies of ornithology; Point Reyes Bird Observatory; Tennessee Ornithological Society; and The Nature Conservancy), 1 organization representing an extractive industry (National Mining Association), and 18 private citizens.

Opposition to the draft list came from 4 animal-rights organizations (Ecology Center of Southern California, Friends of Animals, Friends of Montgomery Village Wildlife, and Humane Society of the United States), 2 law firms (representing the Humane Society of the United States and MBTA Advocates—the litigant in an outstanding lawsuit involving the mute swan), and some 770 private citizens. The vast majority of the latter comments are directly traceable to a posting made on January 13 to a free, weekly e-mail subscription service maintained jointly by the Fund for Animals and the Humane Society of the United States to notify their members of "hot issues in animal protection" and encourage them to write to public officials. Nearly all of these comments repeat the four "talking points" included in the alert and exhibit other similarities indicative of a common origin. The "talking points" are addressed in the Service's responses to Issues 1, 2, 3, and 10.

Issue 1: One reviewer argued at length (and numerous others suggested) that the Service must prepare an Environmental Impact Statement (EIS) before publishing the final list of bird species to which the Migratory Bird Treaty Act does not apply.

Service Response: In requiring (a) that the Secretary "provide adequate time for public comment" on a draft list and (b) that a final list be published "not later

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final List of Bird Species to Which the Migratory Bird Treaty Act Does Not Apply

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We are publishing a final list of the nonnative bird species that have been introduced by humans into the United States or its territories and to which the Migratory Bird Treaty Act (MBTA) does not apply. This action is required by the Migratory Bird Treaty Reform Act (MBTRA) of 2004. The MBTRA amends the MBTA by stating that it applies only to migratory bird species that are native to the United States or its territories, and that a native migratory bird is one that is present as a result of natural biological or ecological processes. This notice identifies those species that are not protected by the MBTA, even though they belong to biological families referred to in treaties that the MBTA implements, as their presence in the United States and its territories is solely the result of intentional or unintentional human-assisted introductions.

than 90 days after the date of enactment" of the MBTRA (December 8, 2004), Congress did not allow sufficient time for the Service to prepare an EIS. The preparation of an EIS would have been inconsistent with the Service's duty to comply with the statutory time period. Furthermore, NEPA does not apply, as this list, which has no legal effect, is not the result of agency decisionmaking; also, publication of the list is a ministerial duty based on factual determinations. To the extent that any change in the scope of the MBTA has occurred, that change occurred upon Public Law 108-447 going into effect.

Issue 2: One reviewer argued at length (and many others agreed) that the draft list was inconsistent with the conventions with Canada, Mexico, Japan, and Russia because it excluded nonnative species from the protection of the MBTA. In particular, the reviewer asserted that Article I of the treaty with Mexico, which states that "it is right and proper to protect birds denominated as migratory, whatever may be their origin," demonstrates that the treaty parties intended to protect nonnative species.

Service Response: Congress explicitly stated its sense that the language of the MBTRA was "consistent with the intent and language of the four bilateral treaties implemented by" the MBTA.

The list is clearly not inconsistent with the conventions with Japan or Russia, as (a) those conventions list in an Annex (Japan) or Appendix (Russia) the individual species that are covered, (b) all of the species listed in the Annex or Appendix are native to both signatory countries, and (c) none of the species on this list appears in the Annex or Appendix.

In the case of the convention with Mexico, the language referred to by the reviewer must be read in the context of the entire sentence. The words "whatever may be their origin" are followed immediately by the words "which in their movements live temporarily" in the United States and Mexico. Therefore, the "whatever may be their origin" language is not inconsistent with the treaty applying only to species that are native to one or both countries. Although the treaty is admittedly silent on the issue, the families of migratory birds that the parties chose to protect strongly suggests that the intention was to protect only native migratory birds, as only families with species native to the United States and Mexico are included. None of the listed families are strictly nonnative to the United States or Mexico.

While the convention with Canada does not specifically make a distinction between native and nonnative or exotic species, the Service has traditionally and consistently interpreted and enforced the convention and the MBTA as applying only to native species. This approach is consistent with the historical fact that all of the contemporaneous concerns leading to enactment of the Canadian convention in 1916 and the MBTA in 1918 focused exclusively on imminent threats to native species, including (a) devastation of native waterfowl, dove and pigeon, and shorebird populations by market hunters; (b) the slaughter of native herons and egrets to supply the millinery trade with their plumes or aigrettes, and (c) the adornment of women's hats with the feathers of native songbirds (Dorsey 1998: 165-246). Moreover, like the treaty with Mexico, the list of bird groups covered by the treaty with Canada strongly suggests that the intent of the parties was to cover native species. Neither the families nor any of the other groupings or individual species mentioned are purely nonnative.

In any case, Congress has acted, and the Service now has no authority to enforce the prohibition of section 703 of the MBTA with respect to nonnative species.

Issue 3: One reviewer argued at length (and many others agreed) that, to avoid unintended consequences, the Service must go through the entire list and provide scientific justification for the inclusion of each individual species, conducting an exhaustive search of existing literature and consulting with ornithologists to ensure that no naturally occurring species have been included.

Service Response: Congress required only that the Service publish a list of species that we deemed to be not protected by the MBTA by virtue of their nonnative human-introduced status. Congress did not require that we publish the actual data on which the list was based. Nevertheless, we did conduct a comprehensive internal review of the relevant ornithological literature in making our determinations. That data was available for inspection during the public comment period as part of the administrative record. In making our determinations, we relied most prominently on the American Ornithologists' Union's (AOU 1998) *Check-list of North American birds*. The *Check-list* was supplemented, where necessary, by Phillips's (1928) *Wild birds introduced or transplanted in North America*, Long's (1981) *Introduced birds of the world*, Berger's

(1981) *Hawaiian birdlife*, Stevenson and Anderson's (1994) *The birdlife of Florida*, and more than 200 other sources. The Ornithological Council concluded in their comments that "the list appears to be entirely consistent with the best available ornithological science." The National Audubon Society and the National Wildlife Federation offered their joint opinion that the list is "scientifically defensible," "thoroughly researched," and "in conformance with the decisions of the American Ornithologists' Union and other proper scientific authorities." The Tennessee Ornithological Society volunteered that, "To the best of our knowledge, no species occur on the list that do not meet the criteria [and] * * * no species have been omitted." In the interest of full public disclosure, the Service has posted—at <http://www.migratorybirds.fws.gov>—a summary of the evidence that it evaluated in reaching its conclusion that all of the species included in the final list are nonnative to the United States and its territories and occur therein solely as a result of human-assisted introductions.

Issue 4: Citing (a) fossil records, (b) historical illustrations, and (c) claims of natural occurrence in western North America, one reviewer claimed that "Under the definitions contained within the MBTRA, the mute swan is indeed a native species and hence entitled to continuing coverage under the Migratory Bird Treaty Act."

Service Response: We disagree for the reasons set forth in the draft list (70 FR 372). To more specifically address this comment, we provide additional information and analysis below.

(a) *Fossil Records.* The relevant scientific literature (Allen 1893; Brodkorb 1958 1964; Howard 1936, 1964; Miller 1948; Parmalee 1961; Shufeldt 1892, 1913a, 1913b; Wetmore 1933, 1935, 1943, 1956, 1957, 1959) reveals that four species of swans are recognized in the prehistoric faunal record of the United States: *Cygnus paloregonus* (extinct), *C. hibbardi* (extinct), *C. columbianus* (tundra swan), and *C. buccinator* (trumpeter swan). Avian paleontologists who examined the remains of *paloregonus* recognized that its skeletal structure was more similar to that of a group of swans formerly lumped together in the subgenus *Sthenelides*, a group that includes *C. olor* (the mute swan), than it was to either the tundra or trumpeter swan. Although sometimes referring to it as "mute-like" in structure, authorities have always recognized *paloregonus* as totally distinct from the mute swan (Brodkorb 1964; Howard

1964; Wetmore 1959), with no evidence of any evolutionary lineage from *paloregonus* to *olor*. Fossil remains of mute swans are known only from present-day Azerbaijan, England, Germany, Ireland, Italy, and Portugal (Howard 1964). In light of the above evidence, Wilmore's (1974:32) unsupported statements regarding the supposed presence of mute swans in North America prior to human settlement (*i.e.*, "From the discovery of swan fossils of the Pleistocene period it is believed the mute swan was indigenous to North America," and "Further proof of the mute being a native of North America has been found") are not scientifically credible.

(b) *Historical Illustrations.* We continue to conclude that none of the birds depicted in Harriot (1590) can be confidently identified to a particular species of swan, and the illustrations certainly do not provide evidence of the presence of mute swans in Pamlico Sound, North Carolina, in the late 16th century. John White (1537–1593), the Governor of the Roanoke colony and the artist whose illustrations grace Harriot (1590), produced a set of 27 portraits of North American birds that now resides in the British Museum; while the trumpeter swan is one of the 25 species illustrated by John White, the mute swan is not (White 2002).

A variety of paper products (such as blotters, calendars, calling cards, postcards, and trade cards) manufactured and sold in the United States in the late 19th and early 20th century often were adorned with fanciful illustrations of birds, and not infrequently the birds depicted were of European origin, including such species as mute swan, European robin, and European goldfinch. For this reason, commercial illustrations such as the Currier & Ives print purportedly depicting mute swans in the Chesapeake Bay in 1872 do not provide reliable evidence of the native occurrence of this species.

It is unreasonable to suggest that a species as large and distinctive as the mute swan—if it was truly a part of the native North American avifauna—would not have been encountered by reputable wildlife artists such as Alexander Wilson or John James Audubon and depicted in their artwork, or collected by any of the early naturalists such as Spencer Fullerton Baird, Charles Lucien Bonaparte, William Brewster, Elliott Coues, Thomas Nuttall, and Robert Ridgway during expeditions of exploration across the length and breadth of the American frontier. The absence of mute swans in the works of Wilson and Audubon,

together with the absence of verifiable 18th or 19th century specimen records, is sufficient evidence for us to conclude that the mute swan is not native to the United States or its territories.

(c) *Claims of natural occurrence in the western United States.* Contrary to the reviewer's claim, the range map in Dement'ev and Gladkov (1952:303) does not depict a mute swan breeding population in extreme northwestern Alaska. In fact, there are no known natural occurrences of mute swans in Alaska (Ciaranca *et al.* 1992; Gabrielson and Lincoln 1959; Gibson 1997). Similarly, the suggestion of "migration" between northeast Siberia and northwest Alaska, "with [mute] swans coming down from Alaska and taking up residence in Washington, Oregon, and parts of Canada in between" is speculation, unsupported by evidence (Ciaranca *et al.* 1992).

All occurrences of the mute swan in British Columbia, Washington, Oregon, and California—including all known instances of breeding—can be confidently attributed to birds originating from human-assisted introductions or escapes (Campbell *et al.* 1990; Washington Ornithological Society 2004; Gilligan *et al.* 1994; Small 1994). The mute swans photographed on a lake in Del Monte, California, and published in the August 1904 issue of *Country Life in America* magazine undoubtedly represent an early introduction of domesticated or semidomesticated birds to the grounds of the luxurious Hotel Del Monte (opened in 1880) or the Old Del Monte golf course (opened in 1897), both located on the Monterey Peninsula. In short, there are no known natural occurrences of mute swans in any of these jurisdictions.

Issue 5: Several reviewers complained that we had not ruled out the possibility of natural occurrence in the United States or its territories for one or more of the species included on the draft list, with the following 19 being specifically mentioned by one or more respondents: bar-headed goose, red-breasted goose, mute swan, white-faced whistling duck, ruddy shelduck, common shelduck, white stork, king vulture, red-backed hawk, great black-hawk, southern lapwing, blue-headed quail-dove, black-throated mango, San Blas jay, great tit, greater Antillean bullfinch, Cuban bullfinch, Cuban grassquit, and European greenfinch.

Service Response: We again reviewed the scientific sources that were used to make a determination that these species are not native to the United States or its territories. We conclude that there is insufficient evidence to show that any

of these species have occurred anywhere in the United States or its territories unaided by human assistance. In particular, the absence of any substantiated record of natural occurrence in the United States or its territories in the AOU Check-list (1998, as amended) or other competent authorities constitutes substantial evidence that none of these species is native to the United States or its territories. This decision does not preclude the addition of any of these species to the list of migratory birds protected by the MBTA (50 CFR 10.13) at some future date should substantive evidence (such as a specimen, identifiable photograph, or sound recording) become available confirming its natural occurrence in the United States or its territories.

Issue 6: Two reviewers questioned the omission of the muscovy duck and requested a clarification as to why this species is not on the list.

Service Response: The muscovy duck (*Cairina moschata*) has been domesticated for hundreds of years, with feral birds now being broadly distributed across the globe. In the United States, domesticated and semidomesticated birds are found in farms, parks, private collections, and zoos, and feral populations have been established in south Texas, Florida, and possibly elsewhere. It is native to the neotropics, where it is "Resident in the lowlands from Sinaloa and Tamaulipas [Mexico], south through most of Middle America (including Cozumel Island) and South America south, west of the Andes to western Ecuador and east of the Andes to northern Argentina and Uruguay" (AOU 1998:64). Through natural expansion, it is now a "Rare visitor on the Rio Grande in Texas (Hidalgo, Starr, and Zapata counties), where breeding was reported in 1994" (*ibid.* 64–65). On that basis, we believe that it now qualifies for protection under the MBTA, and will be making a formal proposal to that effect in a forthcoming revision to the list of migratory birds (50 CFR 10.13) to be published in the *Federal Register*.

Issue 7: The Service must continue to protect all migratory birds until it promulgates the final list of nonnative species.

Service Response: The Service can only enforce the prohibitions of the MBTA as they exist. To the extent that those prohibitions ever applied to nonnative species, they no longer applied as of December 8, 2004. As discussed above, the publication of this final list does not have any legal effect. Even if it did, this issue is now moot with publication of the final list.

Issue 8: One reviewer noted that the MBTRA does little to resolve the problems caused by nonnative birds in the Hawaiian Islands, where at least seven species native to the continental United States have been intentionally introduced and established, with some of them now being detrimental to native wildlife.

Service Response: The MBTA and the international migratory bird conventions do not allow the exemption of species on a geographic basis. If a species is native anywhere in the United States or its territories and belongs to a family covered by one or more of the four conventions, it is protected anywhere and everywhere that the MBTA applies. Federal regulations implementing the MBTA authorize mechanisms such as depredation permits or depredation orders that may be used to grant local authorities greater leeway in dealing with situations in which protected migratory birds are causing damage to agricultural crops, livestock, or wildlife, or when causing a health hazard or other nuisance.

Issue 9: One reviewer argued that nothing in the MBTA or the MBTRA prevents the Service from affording the protection of the MBTA to species that belong to families not covered by any of the underlying migratory bird treaties, and suggested biologically-based criteria that would consider the population status of a species and its need for conservation action rather than the inclusion or exclusion of a family in one or more of the treaties.

Service Response: We disagree. Neither the MBTA nor the MBTRA provide us the authority to grant MBTA protection to species that (a) don't belong to any of the 69 families covered by the Canadian, Mexican, or Russian conventions; or (b) aren't specifically listed in the Japanese or Russian conventions. The inclusion of species that belong to families not currently covered by any of the conventions (such as Psittacidae or Timaliidae, for example) would require an amendment to one of the conventions to expand the families to which it applies (this was done with respect to the treaty with Mexico in 1972), or an amendment to the MBTA applying its prohibitions to species not covered by any of the treaties.

Issue 10: Many of the 770 private citizens opposed to the Service's determination that these species are not subject to the protection of the MBTA expressed the view that publication of the list "will declare an open season on the killing of over a hundred species of birds, and mark the beginning of a mass

slaughter campaign against mute swans."

Service Response: Of the 124 species included on the final list, only one, the mute swan, has ever been treated as Federally protected under the MBTA. See *Hill v. Norton*, 275 F. 3d 98 (D.C. Cir. 2001). By declaring that the MBTA does not apply to nonnative human-introduced species, the MBTRA merely restores the status quo that prevailed during the first 83 years of the MBTA. More than 100 species of nonnative migratory birds have been introduced into the United States or its territories since enactment of the MBTA in 1918. In the absence of Federal protection, 18 of those species successfully established self-sustaining breeding populations. Today, 16 of these 18 species continue to maintain thriving breeding populations and several have expanded their ranges dramatically, all in the continued absence of Federal protection. In publishing this list, we do not "declare an open season" or promote the killing of any species; we merely list the species that are not Federally protected under the MBTA because they are nonnative and human-introduced.

What Determination Did the Service Make Regarding the Mute Swan?

Because of the previous litigation regarding the mute swan, and because of the comments we received asserting that the mute swan is a native species, we have decided to treat the comments received from MBTA Advocates on the proposed list as a petition for rulemaking pursuant to the Administrative Procedure Act, 5 U.S.C. 553(e), to add the mute swan to the list of birds covered by the MBTA found at 50 CFR 10.13. As noted above, the list of nonnative species in this notice is published for information purposes, and does not constitute a binding factual determination by the agency with respect to any of the species listed. In contrast, we have made, in response to the mute swan petition, a factual determination that the mute swan is not native to the United States or its territories. In a separate letter, we have informed MBTA Advocates that we have denied their petition. Members of the public may at any time provide the Service with information concerning whether (a) birds currently listed in 50 CFR 10.13 are not covered by the MBTA, or (b) birds not listed in 50 CFR 10.13 are covered by the MBTA, for any reason, including their status as native or nonnative species. The public may also petition for specific rulemaking changes. In any case, 50 CFR 10.13, subject to any amendments, constitutes

the Service's binding interpretation of the species covered by the MBTA.

How Does the Final List Differ From the Draft List?

Criteria. We revised the first sentence of criteria 3 by replacing "confidently attributed solely to" with "best (or most reasonably) explained by." As revised, this sentence now reads as follows: "All of its [each species] known occurrences in the United States can be best (or most reasonably) explained by intentional or unintentional human-assisted introductions to the wild." This change reflects the reality that there is sometimes a certain amount of uncertainty about the origin or provenance of individuals of some species that appear in the United States. For example, while it may be possible that an individual of a species with no known history of natural occurrence in the United States represents a natural vagrant, the most plausible or reasonable explanation is often that the individual involved represents an intentional introduction or escape from captivity. This criteria is thus consistent with the requirement for substantial evidence of natural occurrence before adding a species to the list of species protected by the MBTA at 50 CFR 10.13.

The List. After further review of the literature and the draft list, we removed 3 species and added 15.

Lanner falcon (*Falco biarmicus*), saker falcon (*F. cherrug*), and barbery falcon (*F. peregrinoides*) are removed because of a lack of substantial evidence that they meet the criteria for inclusion.

Lanner and saker falcons are regularly imported into this country for use in recreational falconry or bird control at airports, and are believed to sometimes escape from their handlers, but we have found no literature documenting the presence of escapes in the United States.

The barbery falcon is currently protected under the MBTA as a subspecies of the peregrine falcon (*F. peregrinus*), in accordance with the taxonomic treatment of the AOU (1998) Check-list. Like the lanner and saker, barbery falcons are regularly imported into this country for use in recreational falconry or bird control at airports, and are believed to sometimes escape from their handlers, but we have found no literature documenting the presence of escapes in the United States.

The removal of these three species or subspecies from this list does not determine their qualification for protection under the MBTA.

The following 14 species were overlooked in the notice of January 4 but there is substantial evidence of nonnative human-introduced

occurrence in the United States or its territories, so we add them to the final list (the authorities upon which these determinations are based are noted parenthetically):

Nettapus coromandelianus, Cotton Pygmy-goose (Pranty 2004).

Pelecanus rufescens, Pink-backed Pelican (McKee and Erickson 2002; Pranty 2004).

Anhinga melanogaster, Oriental Darter (McKee and Erickson 2002).

Platalea leucorodia, Eurasian Spoonbill (Pranty 2004).

Threskiornis aethiopicus, Sacred Ibis (Pranty 2004).

Terathopius ecuadatus, Bateleur (Small 1994).

Grus virgo, Demoiselle Crane (Bull 1974; Cole and McCaskie 2004).

Vanellus spinosus, Spur-winged Lapwing (Bull 1974).

Corvus albicollis, White-necked Raven (Pranty 2004).

Corvus nasicus, Cuban Crow (Zeranski and Baptist 1990).

Pyrhocorax pyrrhocorax, Red-billed Cough (Zeranski and Baptist 1990).

Dendrocitta vagabunda, Rufous Treepie (Bull 1974).

Saxicoloides fucata, Indian Robin (Bull 1974).

Turdus ruficollis, Dark-throated Thrush (Bull 1974).

Cyanerpes cyaneus, Red-legged Honeycreeper (Pranty 2004).

What Criteria Did We Use To Identify Bird Species Not Protected by the MBTA?

In accordance with the language of the MBTRA, the Service relied on substantial evidence in the scientific record in making a determination as to which species qualified as nonnative and human-introduced. Thus, each species in the final list meets the following four criteria:

(1) It belongs to a family of birds covered by the MBTA by virtue of that family's inclusion in any of the migratory bird conventions with Canada, Mexico, Russia, or Japan. The Canadian and Mexican treaties list the families of birds that are protected. In the Russian treaty, the specific species covered are listed in an Appendix in which the species are arranged by family. Article VIII of the Russian treaty allows the parties to protect additional species that belong to the same family as a species listed in the Appendix. The treaty with Japan lists covered species in an Annex without reference to families, and contains no provision that would allow treaty parties to unilaterally add additional species.

(2) There is credible documented evidence that it has occurred at least

once in an unconfined state in the United States or its territories.

(3) All of its known occurrences in the United States can be best (or most reasonably) explained by intentional or unintentional human-assisted introductions to the wild. An intentional introduction is one that was purposeful—for example, the person(s) or institution(s) involved intended for it to happen. An unintentional introduction is one that was unforeseen or unintended—for example, the establishment of self-sustaining populations following repeated escapes from captive facilities. Self-sustaining populations are able to maintain their viability from one generation to the next through natural reproduction without the introduction of additional individuals.

(4) There is no credible evidence of its natural occurrence in the United States unaided by direct or indirect human assistance. The native range and known migratory movements (if any) of the species combine to make such occurrence in the United States extremely unlikely, both historically and in the future. Migratory bird species with credible evidence of natural occurrence anywhere in the United States or its territories, even if introduced elsewhere within these jurisdictions, are listed in 50 CFR 10.13.

The Final List: What Are the Bird Species Not Protected by the MBTA?

We made this list as comprehensive as possible by including all nonnative, human-assisted species that belong to any of the families referred to in the treaties and whose occurrence(s) in the United States and its territories have been documented in the scientific literature. It is not, however, an exhaustive list of all the nonnative species that could potentially appear in the United States or its territories as a result of human assistance. New species of nonnative birds are being reported annually in the United States, and it is impossible to predict which species might appear in the near future.

The appearance of a species on this list does not preclude its addition to the list of migratory birds protected by the MBTA (50 CFR 10.13) at some later date should substantial evidence come to light confirming natural occurrence in the United States or its territories.

The 125 species on this list are arranged by family according to the American Ornithologists' Union (1998, as amended by Banks *et al.* 2003). Within families, species are arranged alphabetically by scientific name. Common and scientific names follow Monroe and Sibley (1993). Where the

names adopted by the American Ornithologists' Union differ from those of Monroe and Sibley, they are given in parentheses. Species with established, self-sustaining populations are denoted with an asterisk (*).

Family Anatidae

Aix galericulata, Mandarin Duck
Alopochen aegyptiacus, Egyptian Goose
Anas hottentota, Hottentot Teal
Anas luzonica, Philippine Duck
Anser anser, Graylag Goose
Anser anser 'domesticus', Domestic Goose
Anser cygnoides, Swan Goose
Anser indicus, Bar-headed Goose
Branta ruficollis, Red-breasted Goose
Callonetta leucophrys, Ringed Teal
Chenonetta jubata, Maned Duck
Coscoroba coscoroba, Coscoroba Swan
Cygnus atratus, Black Swan
Cygnus melanocoryphus, Black-necked Swan

Cygnus olor, Mute Swan*
Dendrocygna viduata, White-faced Whistling-Duck
Neochen jubata, Orinoco Goose
Netta peposaca, Rosy-billed Pochard
Netta rufina, Red-crested Pochard
Nettapus coromandelianus, Cotton Pygmy-goose
Tadorna ferruginea, Ruddy Shelduck
Tadorna tadorna, Common Shelduck

Family Pelecanidae

Pelecanus onocrotalis, Great White Pelican
Pelecanus rufescens, Pink-backed Pelican

Family Phalacrocoracidae

Phalacrocorax gaimardi, Red-legged Cormorant

Family Anhingidae

Anhinga melanogaster, Oriental Darter

Family Threskiornithidae

Platalea leucorodia, Eurasian Spoonbill
Threskiornis aethiopicus, Sacred Ibis

Family Ciconiidae

Ciconia abdimii, Abdim's Stork
Ciconia ciconia, White Stork
Ciconia episcopus, Woolly-necked Stork
Ephippiorhynchus asiaticus, Black-necked Stork

Family Cathartidae

Sarcophaga papa, King Vulture

Family Phoenicopteridae

Phoenicopterus chilensis, Chilean Flamingo
Phoenicopterus minor, Lesser Flamingo

Family Accipitridae

Buteo polyosoma, Red-backed Hawk
Buteogallus urubitinga, Great Black-Hawk
Gyps sp., Griffon-type Old World vulture
Terathopius ecuadatus, Bateleur

Family Rallidae

Aramides cajanea, Gray-necked Wood-Rail

Family Gruidae

Balearica pavonina, Black Crowned-Crane
Balearica regulorum, Gray Crowned-Crane

Grus antigone, Sarus Crane
Grus virgo, Demoiselle Crane

Family Charadriidae
Vanellus chilensis, Southern Lapwing
Vanellus spinosus, Spur-winged Lapwing

Family Laridae
Larus novaehollandiae, Silver Gull

Family Columbidae
Caloenas nicobarica, Nicobar Pigeon
Chalcophaps indica, Emerald Dove
Columba livia, Rock Pigeon*
Columba palumbus, Common Wood-Pigeon
Gallicolumba luzonica, Luzon Bleeding-heart
Geopelia cuneata, Diamond Dove
Geopelia humeralis, Bar-shouldered Dove
Geopelia striata, Zebra Dove*
Geophaps lophotes, Crested Pigeon
Geophaps plumifera, Spinifex Pigeon
Geophaps smithii, Partridge Pigeon
Leucosarcia melanoleuca, Wonga Pigeon
Phaps chalcoptera, Common Bronzewing
Stanoenas cyanocephala, Blue-headed Quail-Dove
Streptopelia bitorquata, Island Collared-Dove*
Streptopelia chinensis, Spotted Dove*
Streptopelia decaocto, Eurasian Collared-Dove*
Streptopelia risoria, Ringed Turtle-Dove*

Family Strigidae
Pulsatrix perspicillata, Spectacled Owl

Family Trochilidae
Anthracothorax nigricollis, Black-throated Mango

Family Corvidae
Calocitta colliei, Black-throated Magpie-Jay
Corvus albicollis, White-necked Raven
Corvus corone, Carrion Crow
Corvus nasicus, Cuban Crow
Corvus splendens, House Crow
Cyanocorax caeruleus, Azure Jay
Cyanocorax sanblasianus, San Blas Jay
Dendrocitta vagabunda, Rufous Treepie
Garrulus glandarius, Eurasian Jay
Pyrrhocorax pyrrhocorax, Red-billed Chough
Urocissa erythrorhyncha, Blue Magpie (=Red-billed Blue-Magpie)

Family Alaudidae
Alauda japonica, Japanese Skylark
Lullula arborea, Wood Lark
Melanocorypha calandra, Calandra Lark
Melanocorypha mongolica, Mongolian Lark

Family Paridae
Parus caeruleus, Blue Tit
Parus major, Great Tit
Parus varius, Varied Tit

Family Cinclidae
Cinclus cinclus, White-throated (=Eurasian) Dipper

Family Sylviidae
Cettia diphone, Japanese Bush-Warbler*
Sylvia atricapilla, Blackcap

Family Turdidae
Copsychus malbaricus, White-rumped Shama*
Copsychus saularis, Oriental Magpie-Robin
Erithacus rubecula, European Robin
Luscinia akahige, Japanese Robin
Luscinia komadori, Ryukyu Robin
Luscinia megarhynchos, Common (=European) Nightingale
Saxicoloides fulicata, Indian Robin
Turdus philomelos, Song Thrush
Turdus ruficollis, Dark-throated Thrush

Family Prunellidae
Prunella modularis, Hedge Accentor (=Dunnock)

Family Thraupidae
Piranga rubriceps, Red-hooded Tanager
Thraupis episcopus, Blue-gray Tanager
Cyanerpes cyaneus, Red-legged Honeycreeper

Family Emberizidae
Emberiza citrinella, Yellowhammer
Gubernatrix cristata, Yellow Cardinal
Loxigilla violacea, Greater Antillean Bullfinch
Melopyrrha nigra, Cuban Bullfinch
Paroaria capitata, Yellow-billed Cardinal*
Paroaria coronata, Red-crested Cardinal*
Paroaria dominicana, Red-cowled Cardinal
Paroaria gularis, Red-capped Cardinal
Sicalis flaveola, Saffron Finch*
Tiaris canora, Cuban Grassquit

Family Cardinalidae
Passerina leclacherii, Orange-breasted Bunting

Family Icteridae
Gymnostinops montezuma, Montezuma Oropendola
Icterus icterus, Troupial*
Icterus pectoralis, Spot-breasted Oriole*
Leistes (=Sturnella) militaris, Red-breasted Blackbird (=Greater Red-breasted Meadowlark)

Family Fringillidae
Carduelis cannabina, Eurasian Linnet
Carduelis carduelis, European Goldfinch
Carduelis chloris, European Greenfinch
Carduelis cucullata, Red Siskin*
Carduelis magellanica, Hooded Siskin
Loxia pyropsittacus, Parrot Crossbill
Serinus canaria, Island (=Common) Canary*
Serinus leucopygius, White-rumped Seed-eater
Serinus mozambicus, Yellow-fronted Canary*

The MBTA also does not apply to many other bird species, including (1) nonnative species that have not been introduced into the U.S. or its territories, and (2) species (native or nonnative) that belong to the families not referred to in any of the four treaties underlying the MBTA. The second category includes the Tinamidae (tinamous), Cracidae (chachalacas), Phasianidae (grouse, ptarmigan, and turkeys), Odontophoridae (New World quail), Burhinidae (thick-knees),

Glareolidae (pratincoles), Pteroclididae (sandgrouse), Psittacidae (parrots), Todidae (todies), Dicruridae (drongos), Meliphagidae (honeyeaters), Monarchidae (monarchs), Pycnonotidae (bulbuls), Sylviidae (Old World warblers, except as listed in Russian treaty), Muscicapidae (Old World flycatchers, except as listed in Russian treaty), Timaliidae (wrentits), Zosteropidae (white-eyes), Sturnidae (starlings, except as listed in Japanese treaty), Coerebidae (bananaquits), Drepanidinae (Hawaiian honeycreepers), Passeridae (Old World sparrows, including house or English sparrow), Ploceidae (weavers), and Estrildidae (estrildid finches), as well as numerous other families not represented in the United States or its territories. A partial list of the nonnative human-introduced species included in category 2 is available at <http://migratorybirds.fws.gov>.

Author

John L. Trapp, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Mail Stop 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

References Cited

- A[llen], J.A. 1893. Shufeldt on fossil birds from Oregon. *Auk* 10:343-345.
- American Ornithologists' Union. 1998. Checklist of North American birds: the species of birds of North America from the Arctic through Panama, including the West Indies and Hawaiian Islands. 7th edition. Washington, DC. 829 pp.
- Banks, R.C., C. Cicero, J.L. Dunn, A. W. Kratter, P.C. Rasmussen, J.V. Remsen Jr., J.D. Rising, and D.F. Stotz. 2003. Forty-fourth supplement to the American Ornithologists' Union Checklist of North American birds. *Auk* 120:923-931.
- Berger, A.J. 1981. Hawaiian birdlife. 2nd edition. University of Hawaii Press, Honolulu.
- Brodkorb, P. 1958. Fossil birds from Idaho. *Wilson Bulletin* 70:237-242.
- Brodkorb, P. 1964. Catalogue of fossil birds. Part 2 (Anseriformes through Galliformes). *Bulletin of the Florida State Museum Biological Sciences* 8:195-335.
- Bull, J. 1974. Birds of New York state. American Museum of Natural History, New York. 655 pp.
- Campbell, R.W., N.K. Dawe, I. McTaggart-Cowan, J. M. Cooper, G. W. Kaiser, and M. C. E. McNall. 1990. The birds of British Columbia. Volume 1. Royal British

- Columbia Museum, Victoria. 514 pp.
- Ciaranca, M. A., C. C. Allin, and G. S. Jones. 1992. Mute Swan (*Cygnus olor*). Birds of North America 273 (A. Poole and F. Gill, eds.), 28 pp.
- Cole, L. W., and G. McCaskie. 2004. Report of the California Bird Records Committee: 2002 records. Western Birds 35:2-31.
- Dement'ev, G. P., and N. A. Gladkov (eds.). 1952. Birds of the Soviet Union. Volume IV. Translated from Russian in 1967 by Israel Program for Scientific Translations, Jerusalem. 683 pp.
- Dorsey, K. 1998. The dawn of conservation diplomacy: U.S.-Canadian wildlife protection treaties in the Progressive Era. University of Washington Press, Seattle. 311 pp.
- Gabrielson, I.N., and F.C. Lincoln. 1959. The birds of Alaska. Stackpole Books, Harrisburg, Pennsylvania. 922 pp.
- Gibson, D.D. 1997. Inventory of the species and subspecies of Alaska birds. Western Birds 28:45-95.
- Gilligan, J., D. Rogers, M. Smith, and A. Contreras. 1994. Birds of Oregon: status and distribution. Cinclus Publications, McMinnville, Oregon. 330 pp.
- Harriot, T. 1590. A brief and true report of the new found land of Virginia. An unabridged 1972 republication of Theodor deBry's English-language edition, with new Introduction by Paul Hulton. Dover Publications, New York. 91 pp.
- Howard, H. 1936. Further studies upon the birds of the Pleistocene of Rancho La Brea. Condor 38:32-36.
- Howard, H. 1964. Fossil Anseriformes. Pp. 233-326 in J. Delacour (ed.), The waterfowl of the world. Volume 4. Country Life Ltd, London. 364 pp.
- Long, J.L. 1981. Introduced birds of the world: the worldwide history, distribution, and influence of birds introduced to new environments. Universe Books, New York. 528 pp.
- McKee, T., and R.A. Erickson. 2002. Report of the California Bird Records Committee: 2000 records. Western Birds 33:175-201.
- Miller, A. H. 1948. The whistling swan in the Upper Pliocene of Idaho. Condor 50:132.
- Monroe, B.L., Jr., and C.G. Sibley. 1993. A world checklist of birds. Yale University Press, New Haven. 393 pp.
- Parmalee, P.W. 1961. A prehistoric record of the trumpeter swan from central Pennsylvania. Condor 75:212-213.
- Phillips, J.C. 1928. Wild birds introduced or transplanted in North America. United States Department of Agriculture Technical Bulletin 61, 63 pp.
- Pranty, B. 2004. Florida's exotic avifauna: a preliminary checklist. Birding 36:362-372.
- Shufeldt, R.W. 1892. A study of the fossil avifauna of the Equus Beds of the Oregon desert. Journal of the Academy of Natural Sciences Philadelphia 11:389-425. (Not seen; cited by reference).
- Shufeldt, R.W. 1913a. Contributions to avian paleontology. Auk 30:29-39.
- Shufeldt, R.W. 1913b. Review of the fossil fauna of the desert region of Oregon, with a description of additional material collected there. Bulletin of the American Museum of Natural History 32:123-178. (Not seen; cited by reference).
- Small, A. 1994. California birds: their status and distribution. Ibis Publishing Company, Vista, California. 342 pp.
- Stevenson, H.M., and B.H. Anderson. 1994. The birdlife of Florida. University Press of Florida, Gainesville.
- Washington Ornithological Society. 2004. Checklist of Washington birds. Available at <http://www.wos.org/WAList01.htm>. Accessed February 22, 2005.
- Wetmore, A. 1933. Pliocene bird remains from Idaho. Smithsonian Miscellaneous Collections 87(20), 12 pp.
- Wetmore, A. 1935. A record of the trumpeter swan from the Late Pleistocene of Illinois. Wilson Bulletin 47:237.
- Wetmore, A. 1943. Remains of a swan from the Miocene of Arizona. Condor 45:120.
- Wetmore, A. 1956. A checklist of the fossil and prehistoric birds of North America and the West Indies. Smithsonian Miscellaneous Collections 131(5), 105 pp.
- Wetmore, A. 1957. A fossil rail from the Pliocene of Arizona. Condor 59:267-268.
- Wetmore, A. 1959. Birds of the Pleistocene in North America. Smithsonian Miscellaneous Collections 138(4), 24 pp.
- White, A.H. 2002. North American bird paintings by John White, Governor of Roanoke. Birding 34:130-134.
- Wilmore, S.B. 1974. Swans of the world. Taplinger Publishing Company, New York. 229 pp.
- Zeranski, J.D., and T.R. Baptist. 1990. Connecticut birds. University Press of New England, Hanover. 328 pp.

Other Sources

A list of other sources used to compile this list is available upon request from any of the ADDRESSES listed above. It has also been posted online at <http://migratorybirds.fws.gov>.

Dated: March 3, 2005.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 05-5127 Filed 3-11-05; 11:37 am]

BILLING CODE 4310-55-P

115-2-3a. This regulation shall be revoked on and after September 15, 2011. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 2009 Supp. 32-988; effective Jan. 1, 2005; amended Jan. 1, 2007; amended July 25, 2007; amended Jan. 1, 2008; amended May 16, 2008; amended Dec. 1, 2008; amended Nov. 20, 2009; amended Jan. 1, 2011; revoked P-_____.)

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

MAY 19 2011

MAY 13 2011

APPROVED BY



APPROVED

ECONOMIC IMPACT STATEMENT

K.A.R. 115-2-3a. Cabin camping permit fees.

DESCRIPTION: This regulation establishes fees for cabin camping within the state parks, state fishing lakes and wildlife areas. Due to legislation passed during the 2011 Session that allows the Commission to set the fees at public meetings without using the regulatory process, the Department is proposing to revoke the regulation.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: The amendments are not anticipated to have any economic impact on the department, the public, small businesses or other agencies.

ALTERNATIVES CONSIDERED: None.

115-8-13. Motorized vehicles and aircraft; authorized operation. (a) Motorized vehicles shall be operated only on department roads and parking areas, except as otherwise established by this regulation or posted notice or as approved by the secretary.

(b) Motorized vehicles shall be operated at speeds not in excess of 25 miles per hour or as otherwise established by posted notice.

(c) Motorized vehicles shall be operated in accordance with load limits as established by posted notice for roads or bridges.

(d) Motorized aircraft landings and takeoffs shall be allowed in designated areas only or as authorized by the secretary.

(e) Except as otherwise specified in K.A.R. 115-8-1, posted notice, or this regulation, motorized electric or gasoline-powered two-wheeled vehicles, all-terrain vehicles, work-site utility vehicles, golf carts, and snowmobiles may be operated on ice-covered department waters only for the purpose of ice fishing from one-half hour before sunrise to one-half hour after sunset. These vehicles shall enter onto the ice only from boat ramps and points of entry as established by posted notice.

(f) (1) Except as provided in this regulation, each motorized vehicle that meets either of the following conditions shall be prohibited from being operated on all department lands and roads:

(A) Is not registered with one of the following:

(i) The director of vehicles pursuant to K.S.A. 8-127 and amendments thereto; or

(ii) the corresponding authority in another state or country; or

(B) is unlawful to be operated on any interstate highway, federal highway, or state highway pursuant to K.S.A. 8-15,100 and ~~L. 2007, Ch. 140, Sec. 3~~ K.S.A. 8-15,109, and amendments thereto.

ATTORNEY GENERAL

MAY 27 2011

APPROVED BY



DEPT. OF ADMINISTRATION

MAY 24 2011

APPROVED

(2) The term "motorized vehicle" shall include cars, trucks, all-terrain vehicles, work-site utility vehicles, golf carts, go-carts, and electric or gasoline-powered two-wheeled vehicles.

~~(f)~~ (g) Any person with a disability, as defined by K.S.A. 8-1,124 and amendments thereto, may annually request a permit from the secretary to utilize a motorized vehicle for accessing certain department lands and roads to provide access to recreational opportunities that would otherwise be unavailable to disabled persons. Each written request shall include the following:

- (1) The name, address, and telephone number of the applicant;
- (2) the nature of the disability;
- (3) the name and location of the property to be accessed;
- (4) the date or duration of the entry requested; and
- (5) documentation of that person's disability in the form of a disabled accessible parking placard, disabled motor vehicle license plate, or disabled identification card issued by the director of vehicles of the department of revenue pursuant to K.S.A. 8-1,125 and amendments thereto, or similar documentation issued by another state.

~~(g)~~ (h) No person who is in possession of a motorized vehicle and has a permit to operate the motorized vehicle on department lands and roads shall perform either of the following:

- (1) Allow another person to operate the vehicle on department lands and roads unless that other person has a permit issued by the department; or
- (2) operate the vehicle on department lands and roads unless that person is in possession of a permit issued by the department.

~~(h)~~ (i) Each permit issued by the department that authorizes the operation of a motorized vehicle

ATTORNEY GENERAL

MAY 27 2011

APPROVED BY 

DEPT. OF ADMINISTRATION

MAY 24 2011

APPROVED

on department lands and roads shall expire on the last day of the calendar year in which the permit was issued, unless otherwise specified on the permit.

(i) (j) A permit that authorizes the operation of a motorized vehicle on department lands and roads shall not be issued or shall be revoked by the secretary for any of the following reasons:

- (1) The disability does not meet the requirements for the permit.
- (2) The application is incomplete or contains false information.
- (3) The disability under which the permit was issued no longer exists.
- (4) The documentation of disability in the form of a disabled accessible parking placard, disabled motor vehicle license plate, or disabled identification card issued by the director of vehicles of the department of revenue pursuant to K.S.A. 8-1,125 and amendments thereto, or similar documentation issued by another state, has expired.

(5) The permit holder fails to comply with the terms and limitations of the permit or with the requirements specified in this regulation.

(6) The issuance or continuation of the permit would be contrary to the preservation of habitat or species located on or in department lands or waters.

(i) (k) This regulation shall not apply to any motorized vehicle that is owned by the department or a designated agent and is used in the operation and maintenance of department lands and roads.

(Authorized by and implementing K.S.A. 32-807; ~~implementing~~ K.S.A. 32-807; effective Dec. 4, 1989; amended Feb. 8, 2008; amended P-_____.)

ATTORNEY GENERAL

MAY 27 2011

APPROVED BY *CW*

DEPT. OF ADMINISTRATION

MAY 24 2011

APPROVED

ECONOMIC IMPACT STATEMENT

K.A.R. 115-8-13. Motorized vehicles and aircraft; authorized operation.

DESCRIPTION: This permanent regulation establishes the authorized operation of motorized vehicles and aircraft upon department lands and roads. The proposed amendments provide for the use of certain vehicles upon ice covered department waters for the purpose of ice fishing.

FEDERAL MANDATE: None.

ECONOMIC IMPACT: The proposed amendments are not anticipated to have any appreciable economic impact on the department, other agencies, small businesses, or the public.

ALTERNATIVES CONSIDERED: None.